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DoD 5400.7-R

DEPARTMENT OF DEFENSE

DoD FREEDOM OF INFORMATION ACT PROGRAM

ASSISTANT SECRETARY OF DEFENSE
(PUBLIC AFFAIRS)

JUNE 1987

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This Regulation cancels DoD 5400.7-R, dated December 1980 (NTIS accession number PB86 183183/AS).

16. Abstract (Limit: 200 words)

This Regulation provides policies and procedures for the Department of Defense implementation of the Freedom of Information Act, as amended by the Freedom of Information Reform Act of 1986. Due to its size and complexity, there is no central repository for Department of Defense records. Consequently, the military departments and separate defense agencies operate their own Freedom of Information programs under the policy guidance set forth by this Regulation. The addresses of the military departments and separate defense agencies are at enclosure 1 to this Regulation, and requests for their records should be forwarded to the respective department or agency.

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ASSISTANT SECRETARY OF DEFENSE
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PUBLIC AFFAIRS

June 10, 1987

FOREWORD

This Regulation is issued under the authority of DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980. It cancels DoD 5400.7-R, "DoD Freedom of Information Act Program," December 1980.

This Regulation is effective immediately and is mandatory for use by DoD Components listed in enclosure 1. Heads of DoD Components may elect to issue supplementary guidance deemed essential to accommodate preceived requirements peculiar to respective DoD Components. Any such guidance may not conflict with this Regulation. DoD Components shall forward copies of supplementary guidance to the address listed in paragraph 4, below for review.

Recommendations for amendments shall be forwarded through appropriate channels to the Director, Freedom of Information and Security Review, who is authorized to approve amendments to this Regulation. The following address shall be used:

Director
Freedom of Information and Security Review
Office of the Assistant Secretary of Defense (Public Affairs)
Room 2C757, The Pentagon
Washington, D.C. 20301-1400

DoD Components may obtain copies of this Regulation through their own publications channels. Other Federal Agencies and the public may obtain copies from the National Technical Information Service, U. S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Robert B Sims

Assistant Secretary of Defense
(Public Affairs)

REFERENCES

(a) Title 5, United States Code, Section 552
(b) DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980
(c) Public Law 86-36, "National Security Information Exemption"
(d) DoD Directive 5400.11, "Department of Defense Privacy Program," June 9, 1982
(e) DoD 5400.11-R, "Department of Defense Privacy Program," August 1983
(f) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Commands," March 17, 1980
(g) Title 5, United States Code, Section 551, "Administrative Procedures Act"
(h) DoD 5200.1-R, "DoD Information Security Program Regulation," June 1986, authorized by DoD Directive 5200.1, June 7, 1982
(i) Title 35, United States Code, Section 181-188, "Patent Secrecy"
(j) Title 42, United States Code, Section 2162, "Restricted Data and Formerly Restricted Data"
(k) Title 18, United States Code, Section 798, "Communication Intelligence"
(l) Title 18, United States Code, Section 3500, "The Jencks Act"
(m) DoD Directive 5230.24, "Distribution Statements on Technical Documents," March 18, 1987
(n) DoD Directive 5400.4, "Provision of Information to Congress," January 30, 1978
(o) DoD Directive 7650.1, "General Accounting Office Comprehensive Audits," July 9, 1958
(p) ACP-121 (United States Supplement 1)
(q) Title 44, United States Code, Chapter 33, "Disposal of Records"
(r) DoD Instruction 7230.7, "User Charges," January 29, 1985
(s) DoD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964
(t) DoD Directive 7750.5, "Management and Control of Information Requirements," August 7, 1986
(u) DoD Instruction 5000.22, "Guide to Estimating Costs of Information Requirements," October 17, 1974
(v) DoD Handbook 7220.9-M, "DoD Accounting Guidance Handbook," November 1983
(w) DoD Directive 5230.25, "Withholding of Unclassified Technical Data From Public Disclosure," November 6, 1984
(x) DoD Directive 5230.9, "Clearance of DoD Information for Public Release," April 2, 1982
(y) DoD Directive 7650.2, "General Accounting Office Audits and Reports," July 19, 1985
(z) Title 10, United States Code, Section 2328, "Release of Technical Data"
(aa) Title 10, United States Code, Section 130, "Authority to Withhold from Public Disclosure Certain Technical Data"
(bb) Title 10, United States Code, Section 2320-2321, "Rights in Technical Data"
(cc) Title 10, United States Code, Section 1102, "Confidentiality of Medical Quality Records: Qualified Immunity Participants"
(dd) DoD Federal Acquisition Regulation Supplement (DFARS), Subpart 27.4, "Technical Data, Other Data, Computer Software and Copyrights," May 18, 1987

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DOD FREEDOM OF INFORMATION ACT PROGRAM

CHAPTER I

GENERAL PROVISIONS

Section 1

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Section 2

PURPOSE AND APPLICABILITY

1-200 Purpose

The purpose of this Regulation is to provide policies and procedures for the Department of Defense (DoD) implementation of the Freedom of Information Act (reference (a)) and reference (b) and to promote uniformity in the DoD Freedom of Information Act (FOIA) Program. This Regulation amplifies enclosures 2 through 7 of DoD Directive 5400.7 (reference (b)).

1-201 Applicability

a. This Regulation applies to the Office of the Secretary of Defense (OSD) (which includes for the purpose of this Regulation the Organization of the Joint Chiefs of Staff, Unified Commands and OSD administrative support agencies), the Military Departments and the Defense Agencies (hereafter referred to as "DoD Components"), and takes precedence over all Component regulations that supplement the DoD FOIA Program. A list of DoD Components is at enclosure 1.

b. The National Security Agency records are subject to the provisions of this Regulation, only to the extent the records are not exempt under Public Law 86-36 (reference (c)).

Section 3

DOD PUBLIC INFORMATION

1-300 Public Information

The public has a right to information concerning the activities of its government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA. In the event a requested record is exempt under the FOIA, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by the release of the record. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

1-301 Control System

A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this Regulation. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this Regulation or under the Privacy Act, when the request is from the subject of the records requested (see paragraph 1-503).

Section 4

DEFINITIONS

1-400 Definitions

As used in this Regulation, the following terms and meanings shall be applicable.

1-401 FOIA Request

A written request for DoD records, made by a member of the public, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7, this Regulation, or DoD Component supplementing regulations or instructions.

1-402 Agency Record

a. The products of data compilation, regardless of physical form or characteristics, made or received by a DoD Component in connection with the transaction of public business and preserved by a DoD Component primarily as evidence of the organization, policies, functions, decisions, or procedures of the DoD Component.

b. The following are not included within the definition of the word "record":

1. Library and museum material made, acquired, and preserved solely for reference or exhibition.

2. Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

3. Commercially exploitable resources, including but not limited to:

(i) Maps, charts, map compilation manuscripts, map research materials and data if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component.

(ii) Computer software, if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software).

4. Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

5. Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

6. Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

7. Information stored within a computer for which there is no existing computer program or printout.

c. A record must exist and be controlled by the Department of Defense at the time of the request to be considered subject to this Regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

1-403 DoD Component

An element of the Department of Defense, as defined in 1-201, authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or appellate authority, and general counsel.

1-404 Initial Denial Authority

An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure.

1-405 Appellate Authority

The head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record.

1-406 Administrative Appeal

A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

Section 5

POLICY

1-500 Compliance with the Freedom of Information Act

DoD personnel are expected to comply with the provisions of the FOIA and this Regulation in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

1-501 Openness with the Public

The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

1-502 Avoidance of Procedural Obstacles

DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this Regulation and any supplemental regulations published by the DoD Components.

1-503 Prompt Action on Requests

When a member of the public complies with the procedures established in this Regulation for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. In circumstances where a Component has a significant number of requests, e.g., 10 or more, the requests will be processed in order of receipt. This does not; however, preclude a Component from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. Requests by individuals for access to records about themselves are processed under the provisions of the respective Act cited in the request. Requests that cite both Acts or neither Act are processed under both Acts, using the fee provisions of the Federal Privacy Act and the time limits of the FOIA. If access is controlled by another federal statute, follow the provisions of the controlling statute and paragraph 3-200 Number 3 of this Regulation. For further details, see reference e. Even though a request that invokes the FOIA is administratively processed under Privacy Act procedures, no record shall be withheld that would be released under FOIA procedures.

1-504 Use of Exemptions

Records that may be withheld under the exemptions outlined in Chapter III of this Regulation shall be made available to the public when it is determined that no governmental interest will be jeopardized by their release. Determination of jeopardy to governmental interest is within the sole discretion of the Component, consistent with statutory requirements, security classification requirements, or other requirements of law.

1-505 Public Domain

Nonexempt records released under the authority of this Regulation are considered to be in the public domain. Nonexempt records maintained in a DoD Component's Public Reading Room, or which can be made available in the Public Reading Room within a short time frame (15 minutes or less) are considered to be in the public domain. Exempt records released pursuant to this Regulation or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this Regulation apply if the same individual seeks the records in a private or personal capacity.

1-506 Creating a Record

A record must exist and be in the possession and control of the Department of Defense at the time of the request to be considered subject to this Regulation. Mere possession of a record does not presume departmental control and such records, or identifiable portions thereof, would be referred to the originating Agency for direct response to the requester. There is no obligation to create nor compile a record to satisfy an FOIA request. A DoD Component, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome

to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessment for direct search, review (in the case of commercial requesters), and duplication associated with the request shall be in accordance with paragraph 6-101.

1-507 Description of Requested Record

a. Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the defect. The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined below in paragraph 1-507b of this regulation. Components are not obligated to act on the request until the requester responds to the specificity letter.

When practicable, Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

b. The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

1. Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

2. Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

c. Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

d. The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

e. The above guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate.

1-508 Referrals

a. A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. In cases where the Component receiving the request has reason to believe that the existence or nonexistence of the record may in itself be classified, that Component will consult the DoD Component having cognizance over the record in question before referring the request. If the DoD Component that is consulted determines that the existence or nonexistence of the record is in itself classified, the requester shall be so notified by the DoD Component orginally receiving the request, and no referral shall take place. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

b. Whenever a record or a portion of a record is, after prior consultation, referred to another DoD Component or to a government agency outside of the Department of Defense for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

c. A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the DoD, if the record originated in the other DoD Component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

d. A DoD Component may also refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or agency for which the record was created may have an equally valid interest in withholding the record as the DoD Component that created the record. In such situations, provide the record and a release recommendation on the record with the referral action. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate contracting officer and the requester shall be notified of the referral.

e. Within DoD, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. The requester then shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

f. DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this Regulation. Those time limits shall begin to run upon receipt of the referral by the official designated to respond.

g. Agencies outside the Department of Defense that are subject to the FOIA:

1. A Component may refer an FOIA request for any record that originated in an agency outside the DoD or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the Component must respond to the request.

2. A DoD Component shall not honor any FOIA request for investigative, intelligence, or any other type of records that are on loan to the DoD for a specific purpose, if the records are restricted from further release and so marked. Such requests shall be referred to the agency that provided the record.

3. Notwithstanding anything to the contrary in Section 1-508, a Component shall forward a request for National Security Council (NSC) documents or White House files to NSC for a direct response to the requester. DoD documents in which the NSC has a concurrent reviewing interest shall be forwarded to DFOISR, OASD (Public Affairs) which shall effect this coordination with the NSC, and return the documents to the originating agency after the NSC review and determination.

h. To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

i. On occasion, the DoD receives FOIA requests for Government Accounting Office (GAO) documents containing DoD information, either directly from requesters, or as referrals from the GAO. The GAO is outside the Executive Branch, and as such, all FOIA requests for GAO documents containing DoD information will be processed under the provisions of Security Review or Mandatory Declassification Review (MDR) Directives (references h and x). Requests received in DoD for unclassified GAO reports containing DoD information will be transferred to the GAO Distribution Center, ATTN: DHISF, P.O. Box 6015, Gaithersburg, MD 20877. Requests received in the DoD for classified GAO documents (or documents unidentifiable as to classification) will be referrred to the GAO, Office of Security and Safety, Washington, D.C. 20548. After internal review, the GAO will refer the request and documents to DoD, Office of the Inspector General, and that Component will refer the action to the Assistant Secretary of Defense (Public Affairs), Directorate for Freedom of Information and Security Review for processing under Security Review or MDR provisions. (See reference y).

1-509 Authentication

Records provided under this regulation shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $5.20 for each authentication.

1-510 Unified and Specified Commands

a. The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 (reference (f)); it authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 (reference (b)) and this Regulation. The Unified Commands shall forward directly to the Office of the Assistant Secretary of Defense (Public Affairs), OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administative requirement are outlined in Appendix A.

b. The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

1-511 Records Management

FOIA records shall be maintained and disposed of in accordance with DoD Component Disposition instructions and schedules.

CHAPTER II

FOIA READING ROOMS

Section 1

REQUIREMENTS

2-100 Reading Room

Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. DoD Components may share reading room facilities if the public is not unduly inconvenienced. The cost of copying shall be imposed on the person requesting the material in accordance with the provisions of Chapter VI of this Regulation.

2-101 Material Availability

The FOIA requires that so-called "(a)(2)" materials shall be made available in the FOI reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing. However, a DoD Component may publish in the Federal Register a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

a. Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551 (reference (f)), that may be cited, used, or relied upon as precedents in future adjudications.

b. Statements of policy and interpretations that have been adopted by the agency and are not published in the Federal Register.

c. Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

1. Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

2. Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

Section 2

INDEXES

2-200 "(a)(2)" Materials

a. Each DoD Component shall maintain in each facility prescribed in paragraph 2-100 an index of materials described in paragraph 2-101 that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this Regulation.

b. Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the Federal Register an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in Chapter VI of this Regulation.

c. Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

2-201 Other Materials

a. Any available index of DoD Component material published in the Federal Register, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms.

b. Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

CHAPTER III

EXEMPTIONS

Section 1

GENERAL PROVISIONS

3-100 General

Records that meet the exemption criteria in Section 2 of this Chapter may be withheld from public disclosure and need not be published in the Federal Register, made available in a library reading room, or provided in response to an FOIA request.

3-101 Jeopardy of Government Interest

An exempted record, other than those being withheld pursuant to Exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no jeopardy to government interest would be served by release. It is appropriate for DoD Components to use their discretionary authority on a case-by-case basis in the release of given records. If a DoD Component determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in this Regulation, the DoD Component shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record. Further guidance on this issue may be found at paragraphs 3-200, Number 4. and 5-207, this Regulation.

Section 2

EXEMPTIONS

3-200 FOIA Exemptions

The following types of records may be withheld in whole or in part from public disclosure unless otherwise precribed by law.

Number 1. Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1-R (reference (h)). Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1-R, Section 2-204f apply.

Number 2. Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DoD Component if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense and they do not impose requirements directly on the general public. Examples include:

a. Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

b. Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

c. Lists of DoD personnel names and duty addresses (civilian and military) created primarily for internal, trivial, housekeeping purposes for which there is no legitimate public interest or benefit. This exemption is appropriate when it would impose an administrative burden to process the request, and the requester is not seeking the information for the benefit of the general public (see also paragraph 3-200, Number 6.b.).

Number 3. Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

a. National Security Agency Information Exemption, P.L. 86-36, Section 6 (reference (c)).

b. Patent Secrecy, 35 U.S.C. 181-188 (reference (i)). Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

c. Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162 (reference (j)).

d. Communication Intelligence, 18 U.S.C. 798 (reference (k)).

e. Authority to Withhold From Public Disclosure Certain Technical Data, 10 U.S.C. 130 and DoD Directive 5230.25 (reference (w) and (aa)).

f. Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C.1102 (reference (cc)).

Number 4. Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

a. Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

b. Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

c. Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

d. Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

e. Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

f. Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with Title 10, U.S.C. 2320-2321 and DoD Federal Acquisition Regulation Supplement (DFARS), Subpart 27.4 (reference (bb) and (dd)). Technical data developed exclusively with federal funds may be withheld under exemption 3 if it meets the criteria of Title 10, U.S.C. 130 and DoD Directive 5230.25 (see paragraph 3-200, Number 3.e.).

Number 5. Except as provided in subsections b. through e., below, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e) (reference (a)) or within or among DoD Components.

a. Examples include:

1. The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

2. Advice, suggestions, or evaluations prepared on behalf of DoD individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

3. Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

4. Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

5. Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the government's negotiating position or other commercial interests.

6. Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any federal, state, or military court, as well as records that qualify for the attorney - client privilege.

7. Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

b. If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this Regulation.

c. Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

d. A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

e. An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

Number 6. Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

a. Examples of other files containing personal information similar to that contained in personnel and medical files include:

1. Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

2. Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

b. In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. One example of such is lists of names and duty addresses of DoD personnel (civilian and military) assigned to units that are sensitive, routinely deployable, or stationed in foreign territories. Release of such information could aid in the targeting of DoD employees and their families by terrorists (see also paragraph 3-200, Number 2.c.). This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

c. Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11 (reference (d)).

d. A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

Number 7. Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law.

a. This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

1. Could reasonably be expected to interfere with enforcement proceedings.

2. Would deprive a person of the right to a fair trial or to an impartial adjudication.

3. Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

4. Could reasonably be expected to disclose the identity of a confidential source, including a source within the DoD, a State, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

5. Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

6. Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

7. Could reasonably be expected to endanger the life or physical safety of any individual.

b. Examples include:

1. Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

2. The identity of firms or individuals being investigated for alleged irregularities involving contracting with Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

3. Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

c. The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500, reference (l)) is not diminished.

d. When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11 (reference (d)).

e. Exclusions. Excluded from the above exemption are the following two situations applicable to the DoD:

1. Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Components may, during only such times as that circumstance continues, treat the records or information as not subject to exemption number 7. In such situation, the response to the requester will state that no records were found.

2. Whenever informant records maintained by a criminal law enforcement organization within a DoD Component under the informant's name or personal identifier are requested by a third part using the informant's name or personal identifier, the Component may treat the records as not subject to exemption number 7, unless the informant's status as an informant has been officially confirmed. It is determined that the records are not subject to exemption 7, the response to the requester will state that no records were found.

Number 8. Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

Number 9. Those containing geological and geophysical information and data (including maps) concerning wells.

CHAPTER IV

FOR OFFICIAL USE ONLY

Section 1

GENERAL PROVISIONS

4-100 General

Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

4-101 Prior FOUO Application

The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

4-102 Historical Papers

Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA (reference (a)).

4-103 Time to Mark Records

The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

4-104 Distribution Statement

Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24 (reference m) shall bear that statement and shall not be marked FOUO.

Section 2

MARKINGS

4-200 Location of Markings

a. An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

b. Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

c. Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

d. Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

e. FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

> This document contains information
> EXEMPT FROM MANDATORY DISCLOSURE
> under the FOIA. Exemptions ..... apply.

Section 3

DISSEMINATION AND TRANSMISSION

4-300 Release and Transmission Procedures

Until FOUO status is terminated, the release and transmission instructions that follow apply:

a. FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

b. DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

c. Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4 (reference (n)). Release to the General Accounting Office (GAO) is governed by DoD Directive 7650.1 (reference (o)). Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

4-301 Transporting FOUO Information

Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

4-302 Electrically Transmitted Messages

Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP-121 (US Supp 1) (reference (p)) for FOUO information.

Section 4

SAFEGUARDING FOUO INFORMATION

4-400 During Duty Hours

During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-governmental personnel.

4-401 During Nonduty Hours

At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty

hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of P.L. 86-36 (reference (c)) shall meet the safeguards outlined for that group of records.

Section 5

TERMINATION, DISPOSAL AND UNAUTHORIZED DISCLOSURES

4-500 Termination

The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

4-501 Disposal

a. Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

b. Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. CH 33 (reference (q)), as implemented by DoD Component instructions concerning records disposal.

4-502 Unauthorized Disclosure

The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

CHAPTER V

RELEASE AND PROCESSING PROCEDURES

Section 1

GENERAL PROVISIONS

5-100 Public Information

a. Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD record made under the FOIA may be denied only when:

1. The record is subject to one or more of the exemptions in Chapter III of this Regulation, and the government's interest will be jeopardized by its release.

2. The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

3. The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

b. Individuals seeking DoD information should address their FOI requests to one of the addresses listed in Appendix B.

5-101 Requests from Private Parties

The provisions of the FOIA are reserved for persons with private interests as opposed to federal or foreign governments seeking information. Requests from private persons will be made in writing, and will clearly show all other addressees within the federal government to whom the request was also sent. This procedure will reduce processing time requirements, and ensure better inter and intra-agency coordination. Foreign governments seeking information from Department of Defense Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in paragraph 1-505.

5-102 Requests from Government Officials

Requests from officials of state, or local governments for DoD Component records shall be honored on an expeditious basis whenever possible. For purposes of determining whether the record or records shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

5-103 Privileged Release to Officials

a. Subject to the provisions of DoD Regulation 5200.1-R (reference (h)), applicable to classified information, DoD Directive 5400.11 (reference (d)), applicable to personal privacy, or other applicable law, records exempt from release under Chapter III of this Regulation may be authenticated and released, in accordance with DoD Component regulations, to officials requesting them on behalf of local, state or federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

1. To Congress, in accordance with DoD Directive 5400.4 (reference (n)).

2. To the federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

3. To other federal agencies, both executive and administrative, as determined by the head of a DoD Component or designee.

4. To state and local officials, as determined by the head of a DoD Component or designee.

b. DoD Components shall inform officials receiving records under the provisions of paragraph 5-103a that those records are exempt from public release under the FOIA and are privileged. DoD Components shall also advise officials of any special handling instructions.

Section 2

INITIAL DETERMINATIONS

5-200 Initial Denial Authority

a. Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

b. The initial determination of whether to make a record available upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibilty to review the requested record for the purpose of determining whether an exemption under this Regulation is applicable and should be invoked.

c. The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

5-201 Reasons for Not Releasing a Record

There are seven reasons for not complying with a request for a record:

a. The request is transferred to another DoD Component, or to another federal agency.

b. The request is withdrawn by the requester.

c. The information requested is not a record within the meaning of the FOIA and this Regulation.

d. A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

e. The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this Regulation or DoD Component supplementing regulations.

f. The DoD Component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. (A "no record" determination is not considered a denial; therefore an appeal is not appropriate).

g. The record is denied in accordance with procedures set forth in the FOIA and this Regulation.

5-202 Denial Tests

To deny a requested record that is in the possession and control of a DoD Component, it must be determined that the denial meets the following tests:

a. The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in Chapter III of this Regulation.

b. The use of its discretionary authority is deemed unwarranted.

5-203 Reasonably Segregable Portions

Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when the meaning of these portions is not distorted by deletion of the denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

5-204 Response to Requester

a. Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the official designated to respond.

b. When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

c. When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

d. The response to the requester should contain information concerning the fee status of the request, consistent the provisions of Chapter VI, this Regulation.

e. The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this Regulation. Merely referring to a classification or to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

f. When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

5-205 Extension of Time

a. In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

1. The requested record is located in whole or in part at places other than the office processing the request.

2. The request requires the collection and evaluation of a substantial number of records.

3. Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this Regulation or should be released as a matter of discretion.

b. The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component, or in accordance with regulations of the DoD Component, or in accordance with regulations of the DoD Component that establish guidance governing the circumstances in which such extensions may be granted.

c. In these unusual cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Components are reminded that the requester still retains the right to treat this delay as a defacto denial with full adminstrative remedies.

d. As an alternative to the taking of formal extensions of time as described in subsections a, b, and c above, the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

5-206 Misdirected Requests

Misdirected requests shall be forwarded promptly to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

5-207 Records of Non-U.S. Government Source

a. When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information [also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552 (reference (a)) Exemption (b)(4)] [Chapter III, section 2, paragraph 3-200, number 4., this Regulation] will be notified promptly of that request and afforded reasonable time (eg. 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under Exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under Exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known.

b. The coordination provisions of this paragraph also apply to any non-U.S. government record in the possession and control of DoD from multi-national organizations, such as NATO and NORAD, or foreign governments. Coordination with foreign governments under the provisions of this paragraph will be made through Department of State.

5-208 File of Initial Denials

Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

5-209 Special Mail Services

Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

5-210 Receipt Accounts

The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described below, shall be used for depositing all FOIA receipts, except receipts for industrially-funded and non-appropriated funded activities. Components are reminded that the below account numbers must be preceeded by the appropriate disbursing office two digit prefix. Industrially-funded and nonappropriated funded activity FOIA receipts shall be deposited to the applicable fund.

a. Receipt Account 3210.9999, Sale of Publications and Reproductions, Freedom of Information Act. This account shall be used when depositing funds received from providing existing publications and forms that meet the Receipt Account Series description found in Federal Account Symbols and Titles.

b. Receipt Account 3210.0500, Fees and Other Charges for Services, Freedom of Information Act. This account is used to deposit search fees, fees for duplicating and reviewing (in the case of commercial requesters) records to satisfy requests that could not be filled with existing publications or forms.

Section 3

APPEALS

5-300 General

If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees.

A "no record" finding may not be appealed, although the requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files.

5-301 Time of Receipt

An FOI appeal has been received by a DoD Component when it reaches the office an of the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

5-302 Time Limits

a. The requester must file an appeal so that it reaches the appellate authority no later than 45 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation for denial of his appeal. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained during the time permitted for appeal.

b. Final determinations on appeals normally shall be made within 20 working days after receipt.

5-303 Delay in Responding to an Appeal

a. If additional time is needed due to the unusual circumstances described in paragraph 5-205, the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request.

b. If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in paragraph 5-205, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

5-304 Response to the Requester

a. When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

b. Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, at a minimum, shall include the following:

1. The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption or exemptions invoked under provisions of this Regulation.

2. When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

3. The final denial shall include the name and title or position of the official responsible for the denial.

4. The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

5. The response shall advise the requester of the right to judicial review.

5-305 Consultation

a. Final refusal, involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components, ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

b. Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the government shall be brought to the attention of the Freedom of Information Committee of the Department of Justice through the Office of Information Law and Policy.

Section 4

JUDICIAL ACTIONS

5-400 General

a. This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind DoD to particular judicial interpretations or procedures.

b. A requester may seek an order from a United States District court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and set forth in this Regulation.

5-401 Jurisdiction

The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

5-402 Burden of Proof

The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

5-403 Actions by the Court

a. When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

b. If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

c. When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

d. The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

5-404 Non-United States Government Source Information

A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

5-405 Litigation Status Sheet

Freedom of Information managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at Appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the Director for Freedom of Information and Security Review, Office

of the Assistant Secretary of Defense (Public Affairs) with an information copy to the Office of Legal Counsel, Department of Defense General Counsel. A revised Litigation Status Sheet shall be provided at each stage of the litigation.

CHAPTER VI

FEE SCHEDULE

Section 1

GENERAL PROVISIONS

6-100 Authorities

The Freedom of Information Act (5 U.S.C. 552), as amended; by the Freedom of Information Reform Act of 1986; the paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et. seq.); the Budget and Accounting Procedures Act (31 U.S.C. 67 et. seq.); the Defense Authorization Act for FY 87, Section 954, (P.L. 99-661), as amended by the Defense Technical Corrections Act of 1987 (P.L. 100-26).

6-101 Application

a. The fees described in this chapter apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7 (reference (r)), which does not supersede the collection of fees under the FOIA. Nothing in this chapter shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552 (a)(4)(A)(vi)) means any statute that enables a government agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

b. The term "direct costs" means those expenditures a component actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to an FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed at Section 2 of this Chapter. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

c. The term "search" includes all time spent looking for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the document to determine if it, or portions thereof are responsive to the request. Components should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the Component and the requester. For example,

Components should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time. See paragraph 6-101 e. for the definition of review, and paragraph 6-201 b. for information pertaining to computer searches.

d. The term "duplication" refers to the process of making a copy of a document in response to an FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to insure that the copy provided is in a form that is reasonably useable by requesters. If it is not possible to provide copies which are clearly useable, the requester will be notified that their copy is the best available and that the agency's master copy will be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a component estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

e. The term "review" refers to the process of examining documents located in response to an FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. Components may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

6-102 Fee Restrictions

a. No fees may be charged by any DoD component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved two hours and ten minutes of search time, and resulted in one hundred and five pages of documents, a Component would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than the cost to the Component for billing the requester and processing the fee collected, no charges would result.

b. Requesters receiving the first two hours of search and the first one hundred pages of duplication without charge are entitled to such only once per request. Consequently, if a Component, after completing its portion of a request, finds it necessary to refer the request to a subordinate office,

another DoD Component, or another federal agency to action their portion of the request, the referring Component shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

c. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Component of receiving and recording a remittance, and processing the fee for deposit in the Treasury Department's special account. The cost to the Treasury to handle such remittance is negligible and shall not be considered in Components' determinations.

d. For the purposes of these restrictions, the word "pages" refers to paper copies of a standard size, which will normally be "8½ x 11" or "11 x 14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout; however, might meet the terms of the restriction.

e. In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24.00 (two hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time.

6-103 Fee Waivers

a. Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in paragraph 6-104 when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester.

b. When direct costs for an FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

c. Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

1. Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."

(i) The subject of the request. Components should analyze whether the subject matter of the request involves issues which will significantly contribute to the public understanding of the operations or activities of the DoD. Requests for records in the possession of DoD which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value will likely not contribute to public understanding of the operations or activities of the DoD. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DoD activity.

Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the DoD; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the DoD, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the DoD.

(ii) The informative value of the information to be disclosed. This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and will inform the public on the operations or activities of the DoD. While the subject of a request may contain information which concerns operations or activities of the DoD, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a heavily redacted record, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the DoD must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activitites of the DoD.

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure. The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertion work, or indigency are insufficient without demonstrating the capacity to further disclose the information in a manner which will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(iv) The significance of the contribution to public understanding. In applying this factor, components must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists prior to the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public. A decision regarding significance requires objective judgment, rather than subjection determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. Components shall not make value judgments as to whether the information is important enough to be made public.

2. Disclosure of the information "is not primarily in the commercial interest of the requester."

(i) The existence and magnitude of a commercial interest. If the request is determined to be of a commercial interest, Components should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, Components may draw inference from the requester's identity and circumstances of the request. In such situations, the provisions of paragraph 6-104 apply. Components are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

(ii) The primary interest in disclosure. Once a requester's commercial interest has been determined, Components should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

d. Components are reminded that the above factors and examples are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, Components should rule in favor of the requester.

e. In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

1. A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

2. A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. $15.00 - $30.00).

6-104 Fee Assessment

a. Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

b. In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Components shall adhere to the following procedures:

1. Analyze each request to determine the category of the requester. If the Component determination regarding the category of the requester is different than that claimed by the requester, the component will:

(i) Notify the requester that he should provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the Component shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(ii) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Component.

2. Requesters must submit a fee declaration appropriate for the below categories.

(i) Commercial. Requesters must indicate a willingness to pay all search, review and duplication costs.

(ii) Educational or Noncommercial Scientific Institution or News Media. Requesters must indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(iii) All Others. Requesters must indicate a willingness to pay assesable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

3. If the above conditions are not met, then the request need not be processed and the requester shall be so informed.

4. In the situations described by b.1. and 2. above, Components must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Components, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should Component estimates exceed the actual amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

5. No DoD Component may require advance payment of any fee, i.e., payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Component.

6. Where a Component estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the Component shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

7. Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the Component may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Component begins to process a new or pending request from the requester. Interest will be at the rate prescribed in Section 3717 of Title 31, U.S.C.A., and confirmed with respective Finance and Accounting Offices.

8. After all work is completed on a request, and the documents are ready for release, Components may request payment prior to forwarding the documents if there is no payment history on the requester, or if the requester has previously failed to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing). In the case of the latter, the provisions of b.7., above apply. Components may not hold documents ready for release pending payment from requesters with a history of prompt payment.

9. When Components act under subparagraphs 1-7 above, the administrative time limits of the FOIA (i.e., 10 working days from receipt of initial requests, and 20 working days from receipt of appeals, plus permissable extensions of these time limits) will begin only after the Component has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

10. Components may charge for time spent searching for records, even if that search fails to locate records responsive to the request, or if records located are determined to be exempt from disclosure. In practice, if the Component estimates that search charges are likely to exceed $25.00 it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

c. Commercial Requesters. Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought (see paragraph 1-507).

1. The term "commercial use' request" refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Components must determine the use to which a requester will put the documents requested. Moreover, where a Component has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Components should seek additional clarification before assigning the request to a specific category.

2. When Components receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

d. Educational Institution Requesters. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought (see paragraph 1-507). The term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

e. Non-Commercial Scientific Institution Requesters. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought (see paragraph 1-507). The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as defined in subparagraph c., above, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

f. Components shall provide documents to requesters in subparagraphs d. and e., above for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

g. Representatives of the news media. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought (see paragraph 1-507).

1. The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even through not actually employed by it. A publication contract would be the clearest proof, but Components may also look to the past publication record of a requester in making this determination.

2. To be eligible for inclusion in this category, a requester must meet the criteria in subparagraph 1., above, and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

f. All Other Requesters. Components shall charge requesters who do not fit into any of the above categories, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought (see paragraph 1-507). Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. Components are reminded that this category of requester, as well as the aforemention categories of requesters may be eligible for a waiver or reduction of fees if such is in the public interest as defined under paragraph 6-103 a. (See also paragraph 6-104 c.2.).

6-105 Aggregating Requests.

Except for requests that are for a commercial use, a Component may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When a Component reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting

to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30 day period had been made to avoid fees. For requests made over a longer period; however, such a presumption becomes harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

6-106 Effect of the Debt Collection Act of 1982 (P.L. 97-365).

The Debt Collection Act of 1982 (P.L. 97-365) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in Section 3717 of Title 31 U.S.C.A.. Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to the Debt Collection Act of 1982.

6-107 Computation of Fees

The fee schedule in this chapter shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

Section 2

COLLECTION OF FEES AND FEE RATES

6-200 Collection of Fees

Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the DoD Component, or the Component has determined that the fee will be in excess of $250 (see paragraph 6-104).

6-201 Search Time

a. Manual Search

Type	Grade	Hourly Rate($)
Clerical	E9/GS8 and below	12
Professional	01-06/GS9-GS/GM15	25
Executive	07/GS/GM16/ES1 and above	45

b. Computer Search

Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The salary scale (equating to paragraph a. above) for the computer operator/programmer determining how to conduct and subseqently e cuting the search will be recorded as part of the computer search.

6-202 Duplication

Type	Cost per Page(¢)
Pre-Printed material	02
Office copy	15
Microfiche	25
Computer copies (tapes or printouts)	Actual cost of duplicating the tape or printout (includes operator's time and cost of the tape)

6-203 Review Time (in the case of commercial requesters)

Type	Grade	Hourly Rate($)
Clerical	E9/GS8 and below	12
Professional	01-06/GS9-GS15	25
Executive	07/GS16/ES1 and above	45

6-204 Audiovisual Documentary Materials

Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

6-205 Other Records

Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

6-206 Costs for Special Services

Complying with requests for special services is at the discretion of the Components. Neither the FOIA, nor its fee structure cover these kinds of services. Components may, therefore, recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

a. Certifying that records are true copies.
b. Sending records by special methods such as express mail, etc.

Section 3

COLLECTION OF FEES AND FEE RATES FOR TECHNICAL DATA

6-300 Fees for Technical Data

a. Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this Section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. Department of Defense Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absense of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full cost shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under Section 2 for other types of information released under the FOIA.

b. Waiver. Components shall waive the payment of costs required in paragraph a. above, which are greater that the costs that would be required for release of this same information under Section 2 of this Chapter if:

1. The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

2. The release of technical data is requested in order to comply with the terms of an international agreement; or,

3. The Component determines in accordance with paragraph 6-103 a. that such a waiver is in the interest of the United States.

c. Fee Rates.

1. Search Time

(i) Manual Search

Type	Grade	Hourly Rate($)
Clerical	E9/GS8 and below	13.25
(Minimum Charge)		8.30

Professional (To be established at actual hourly rate prior to search. A minimum charge will be established at 1/2 hourly rates)

(ii) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in (i), above) for the computer operator/programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

2. Duplication

Type	Cost
Aerial Photographs, Specifications, Permits, Charts, Blueprints, and other technical documents	$2.50
Engineering data (microfilm)	
a. Aperture cards	
(i) Silver duplicate negative, per card	.75
When key punched and verified, per card	.85
(ii) Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
b. 35mm roll film, per frame	.50
c. 16mm roll film, per frame	.45
d. Paper prints (engineering drawings), each	1.50
e. Paper reprints of microfilm indices, each	.10

3. Review Time

Type	Grade	Hourly Rate($)
Clerical	E9/GS8 and below	13.25
(Minimum Charge)		8.30

Professional (To be established at actual hourly rate prior to review. A minimum charge will be established at 1/2 hourly rates)

d. Other Technical Data Records

Charges for any additional services not specifically provided above, consistent with reference (r), shall be made by Components at the following rates:

1. Minimum charge for office copy (up to six images).....$3.50
2. Each additional image..... .10
3. Each typewritten page.....3.50
4. Certification and validation with seal, each.....5.20
5. Hand-drawn plots and sketches, each hour or fraction thereof.....12.00

CHAPTER VII

REPORTS

Section 1

REPORTS CONTROL

7-100 General

The reporting requirement outlined in this chapter is assigned Report Control Symbol DD-PA (A) 1365.

Section 2

ANNUAL REPORT

7-200 Reporting Time

Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those items prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11 (reference (s)). The standard data elements are contained in DoD 5000.12-M.

7-201 Annual Report Content

The following instructions and attached format shall be used in preparing the annual report.

1. ITEM 1

a. Completed Public Requests: Enter the total number of FOIA requests received and responded to during the reporting period.

b. Completed Reportable Requests: Enter the number of actions taken on a completed public request. To arrive at this figure, count the number of blocks checked in item a. of the Annual Report Worksheet (see paragraph 7-203) for each request processed. (Note: This figure will be equal to or greater than item 1a, above).

c. Number of Requests Denied: Enter the number of FOIA requests which were denied in whole or in part based on one or more of the nine FOIA exemptions.

d. Other Reason Responses: Enter the number of FOIA requests in which you were unable to provide the requested information based on an "Other Reason" response, (See Item 2c., below for an explanation of "Other Reason" responses).

e. Total: Enter the sum of Item 1c and 1d.

2. ITEM 2

a. Exemptions Invoked on Initial Determinations: Identify the exemption(s) claimed for each request that was denied in whole or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal or greater than that of item 1c, above.

b. "(b)(3)" Statutes Invoked on Initial Determinations: Identify the statute(s) cited when you claimed a "(b)(3)" exemption. Cite the specific sections when invoking the Atomic Energy Act of 1954, or the National Security Act of 1947.

c. Initial Request Other Reason Responses: Identify the "other reason" response cited when responding to an FOIA request and enter the number of times each was claimed.

1. Transferred Requests: Enter the number of times a request was transferred to another DoD Component or federal agency for action.

2. Lack of Records: Enter the number of times a search of files failed to identify records responsive to subject request and there was no statutory obligation to create a record.

3. Failure of Requester to Reasonably Describe Record: Enter the number of times an FOIA request could not be acted on since the requester failed to reasonably described the record(s) being sought.

4. Other Failures by Requester to Comply with Published Rules and/or Directives: Enter the number of times a requester failed to follow published rules concerning time, place, fees, and procedures.

5. Request/Appeal Withdrawn by Requester: Enter the number of times a requester withdrew a request/appeal.

6. Not an Agency Record: Enter the number of times a requester was provided a response indicating the requested information was not an agency record.

TOTAL: Enter the sum of columns 1 through 6.
The total will be equal to or greater than item 1d, since more than one other reason response may be claimed.

3. ITEM 3

INITIAL DENIAL AUTHORITIES (IDA'S BY PARTICIPATION)

a. Total IDA's Authorized: Enter the total number of IDA's at your activity.

b. Individuals Involved in Adverse Determinations: Enter the name, grade, activity and title of each individual who signed a partial/total denial or "other reason" response and cite the number of instances of participation.

4. ITEM 4

NUMBER OF APPEALS AND RESULTS

Number of Appeals: Enter the disposition of appeals under the appropriate category and then the total.

5. ITEM 5.

a. Exemptions Invoked on Appeal Determinations: Identify the exemption(s) claimed for each appeal that is denied in whole or part. Since more than one exemption may be claimed when responding to a single appeal, this number will be equal to or greater than the total listed in Item 4, above.

b. Statutes Invoked on Appeal Determinations: Identify the statute(s) cited when you claimed a "(b)(3)" exemption.

c. Other Reasons Cited on Appeal Determinations: Identify the "other reason" response when responding to an appeal and enter the number of times each was claimed and the total.

6. ITEM 6

Participation of Appellate Authorities (Those Responsible for Denials in Whole or in Part): Enter the name, grade, activity, and title of each individual who signed a partial/total denial or "other reason" response and cite the number of instances of participation.

7. ITEM 7

Court Opinions and Action Taken: Briefly describe the results of each suit the Judge Advocate General and/or the General Counsel participated in during the calender year. Provide a copy of each final court opinion or order.

8. ITEM 8

FOIA Implementation Rules or Regulations: List all changes or revisions of rules or regulations affecting the implementation of the FOIA Program, followed by the Federal Register reference (volume number, date, and page) that announces the change or revision to the public. Append a copy of each.

9. ITEM 9

FOIA Instructional and Educational Efforts: Report what training/seminars your activity has given or attended during this reporting period.

10. ITEM 10

a. Cost of Routine Request: Some reporting activities will find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. This section provides for that economy, but care must be exercised so that costs are comprehensive to include a 25% overhead, yet are not duplicated elsewhere in the report.

b. Personnel Costs: (Civilian and Military)

1. Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade: Personnel costs are reported in two ways. This section uses a manyear/wage type of costing by grade. To achieve this computation, identify those individuals who are primarily involved in the planning, program management and/or administrative handling of FOIA requests. Use DoD Accounting Guidance Handbook (DoD 7220.9-M) for military personnel and Office of Personnel Management salary table for civilian personnel to identify salaries.

Sample Computation:

Grade	#of Pers	Salary	% of Time	Costs
0-5	1	$50,000	10	$5,000
0-1	1	21,000	30	6,000
GS-12	1	35,000	50	17,500
GS-5	1	18,000	50	9,000

To determine the manyear computation: Add the total percentages of time and divide the percentage by 100.

Sample Computation: Manyears = 140% divided by 100 = 1.4 manyears.

2. Direct costs for other personnel involved in processing request not included above upon accumulation of total hourly data: This section accounts for all other personnel (not reported above) who are involved in processing FOIA requests. Enter the total hourly cost for each area. Only search, review, and reproduction costs may be recouped from the requester. Review costs may only be recouped from commercial requesters. In the case of collections resulting from release of technical data, all reasonable costs for search and reproduction may be recouped (See Section 3, Chapter VI).

(a) Search Time Cost - This includes only those direct costs associated with time spent looking for material that is responsive to a request, including line-by-line identification of material within a document to determine if it is responsive to the request. Searches may be done manually or by computer using existing programming.

(b) Classification Review Costs This includes all direct costs incurred during the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure; e.g. doing all that is necessary to excise them and otherwise prepare them for release. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) Coordination and Approval/Denial Decision Costs - This includes all costs involved in coordinating the release/denial of documents requested under the FOIA.

(d) Correspondence and Form Preparation Costs - This includes all costs involved in typing reponses, filling out forms and/or logbooks, supplies, etc., to respond to an FOIA request.

(e) Other Activity Costs - This includes all other processing costs not covered above, such as processing time by the mail room.

Total Manhour Costs: Enter the sum of 2(a) through 2(e).

3. Application of Overhead - The overhead rate is 25% and includes the cost of supervision, space and administrative support. Add items 1 and 2, then multiply the sum by 25%.

c. Other Case Related Costs: Using the fee schedule, enter tht total amounts incurred in each area to process FOIA requests.

d. Other Operating Costs: Report all other costs which are easily identifiable, such as: per diem, operation of courier vehicles, training courses, printing (indexes and forms), long distance telephone calls, special mail services, use of indicia, etc.

e. SUMMARY: The summary data provides a total cost figure for administering the FOIA Program and a recap of the fees collected.

11. ITEM 11

a. Formal Time Extensions: Enter the total number of instances in which it was necessary to seek a formal 10 working day time extension, because of:

1. Location: The need to search for and collect the requested records from another activity that was separate from the office processing the request.

2. Volume: The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records indicated in a single request.

3. Consultation: The need for consultation with another agency having substantial interest in the material requested.

4. Court Involvement: Where court actions were taken on the basis of exhaustion of administrative procedures because the department/activity was unable to comply with the request within the applicable time limits, and in which a court allowed additional time upon a showing of exceptional circumstances, provide a copy of each court opinion and court order containing such an extension of time.

b. TOTAL: Enter the sum of items 1 through 4.

7 - 202 Annual Report Format

ITEM 1

A Completed Public Requests	B Completed Reportable Requests	C Number of Requests Denied (Partial and Total)	D Number of 'Other Reason' Responses Made	E Total (C + D)

ITEM 2

A. Exemptions Claimed in Denial Letters:

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	Total

B. '(b)(3)' Statutes Claimed in Denial Letters:

List of '(b)(3)' Statutes Claimed	Number of Times Cited

C. 'Other Reasons' Cited in Response to FOIA Requests	1	2	3	4	5	6	Total

ITEM 3

Denials and 'Other Reason' Responses

A. Total Number of IDA's Authorized to Sign Denial Letters

B. List of All Individuals who Signed A Denial Letter or 'Other Reason' Responses:

Name	Rank	Title	Number of Instances of Participation: Exemption	Other

ITEM 4

A. Number of Appeals Received and Action Taken:

1 Granted in Full	2 Granted in Part	3 Denied in Full	4 Total

ITEM 5

A. Exemptions Invoked on Appeal Determinations:

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	Total

B. "(b)(3)" Statutes Invoked on Appeal Determinations:

List of "(b)(3)" Statutes Invoked	Number of Times Cited

C. "Other Reasons" Cited on Appeal Determination	1	2	3	4	5	6	Total

ITEM 6

A. List of All Individuals Who Signed an Appeal Determination or "Other Reason" response.

Name	Rank	Title	Number of Instances of Participation Exemption	 Other

ITEM 7

A. Court Opinions and Actions Taken, for Example:

J. Q. Public v. Department of the Army, CMI No. 87 - 2600 (S.D. Cal.)

On January 1, 1987, plaintiff filed suit seeking a CID investigation which was being reviewed by the United States Attorney for possible prosecution. Plaintiff is a former Army General attorney. Final order, May 1987, ordered release of majority of CID report of investigation

ITEM 8

A. FOIA Implementation Rules or Regulations (Published During the Reporting Period):

Document Identification	Federal Register Reference		
	Number	Date	Page

ITEM 9

A. FOIA Instructional and Educational Efforts:

Course	Sponsor	Date	Hours

ITEM 10

A. Cost of Routine Requests Processed:
(Number of reportable requests X cost factor per request) $ _____

B. Personnel Costs (CMilian and Military):

1. Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade.
   Total Manyears _____ Cost $ _____

2. Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:

   a. Search Time Costs $ _____

   b. Classification Review and Excising Action Costs $ _____

   c. Coordination/Approval/Denial Decision Costs $ _____

   d. Correspondence and Form Preparation Costs $ _____

   e. Other Activity Costs $ _____

   Total Manhour Costs $ _____

3. Application of Overhead

   (Subtotal 1 + 2) x 25% overhead: $ _____

   Total of Personnel Costs $ _____

C. Other Case Related Costs:

1. Computer $ _____
2. Office Copy Reproduction $ _____
3. Microfiche Reproduction $ _____
4. Cost of Printed Records $ _____

Total of Other Costs $ _____

ITEM 10 (Continued)

D. Other Operating Costs:

1. Reporting Costs

a. Operational $ _____

b. User $ _____

c. Overhead: (a + b) x 25% $ _____

2. Other Costs as Directed or Which can be Reasonably Ascertained. $ _____

Total Other Operating Costs (Subtotal 1 + 2) $ _____

E. Summary:

1. Total Costs of Sections 10A through 10D $ _____

2. Amount Collected from Requesters during this Reporting Period:

a. Search $ _____

b. Copy $ _____

c. Review $ _____

d. Total Collected $ _____

ITEM 11

A. Formal Time Limit Extension Taken:

1	2	3	4
Location	Volume	Consultation	Court Involvement

B. Total _____

7-203 ANNUAL REPORT WORKSHEET

a. ACTION(S) TAKEN ON COMPLETED PUBLIC REQUEST:

_____Granted in Full
_____Granted in Part
_____Denied

Other:
_____ Transferred to: _____
_____ Lack of Records
_____ Requester failed to reasonably describe the record
_____ Requester failed to comply with established rules/directives
_____ Requester withdrew request/appeal
_____ Not an agency record

b. COMPLETED REPORTABLE REQUESTS: _____
(Count the number of actions checked in a. and enter total)

c. STATUTORY FOIA EXEMPTIONS INVOKED: _____
(Enter total number blocks checked below)

_____(b)(1)	_____(b)(4)	_____(b)(7)
_____(b)(2)	_____(b)(5)	_____(b)(8)
_____(b)(3)	_____(b)(6)	_____(b)(9)

d. LIST OF (b)(3) STATUTES INVOKED: _____

e. NAME, COMMAND AND TITLE OF INITIAL DENIAL AUTHORITY: _____

f. REMARKS: _____

CHAPTER VIII

EDUCATION AND TRAINING

Section 1

RESPONSIBILITY AND PURPOSE

8-100 Responsibility

The head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this Regulation. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOI requests, and should provide a thorough understanding of the procedures outlined in this Regulation.

8-101 Purpose

The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

8-102 Scope and Principles

Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this Regulation. The program should be designed to accomplish the following objectives:

a. Familiarize personnel with the requirements of the FOIA and its implementation by this Regulation.

b. Instruct personnel, who act in FOI matters, concerning the provisions of this Regulation, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

c. Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

d. Advise personnel of the penalties for noncompliance with the FOIA.

8-103 Implementation

To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this Regulation should be coordinated with the Director, Freedom of Information and Security Review, OASD (Public Affairs).

8-104 Uniformity of Legal Interpretation

In accordance with DoD Directive 5400.7 (reference (b)), the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program.

APPENDIX A

UNIFIED COMMANDS - PROCESSING PROCEDURES FOR FOI APPEALS

1. General

a. In accordance with DoD Directive 5400.7 (reference (b)) and this Regulation, the Unified Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Program. This policy represents an exception to the policies in DoD Directive 5100.3 (reference (f)).

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 (reference (b)) and DoD Instruction 5400.10, August 20, 1981, and to forward directly to the Office of the Assistant Secretary of Defense (Public Affairs) all correspondence associated with the appeal of an initial denial for information under the provisions of the Freedom of Information Act (FOIA).

2. Responsibilities of Commands

Unified Commanders in Chief shall:

a. Designate the officials authorized to deny initial FOI requests for records.

b. Designate an office as the point-of-contact for FOI matters.

c. Refer FOI cases to the ASD(PA) for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

d. Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of the Department of Defense, if required, is authorized.

e. Coordinate proposed denials of records with the appropriate Unified Command's Office of the Staff Judge Advocate.

f. Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

g. Provide to the ASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

h. State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the ASD(PA), the Pentagon, Washington, D.C. 20301.

i. Upon request, submit to ASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

3. Fees for FOI Requests

The fees charged for requested records shall be in accordance with Chapter VI of this Regulation.

4. Communications

Excellent communication capabilities currently exist between the Office of the ASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOI cases that are time sensitive.

5. Reporting Requirements

a. The Unified Commands shall submit to the ASD(PA) an annual report. The instructions for the report are outlined in Chapter VII of this Regulation.

b. The annual report shall be submitted in duplicate to the ASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD-PA 1365.

APPENDIX B

ADDRESSING FOIA REQUESTS

1. General

a. The Department of Defense includes the Office of the Secretary of Defense and the Organization of the Joint Chiefs of Staff, the Military Departments, the Unified and Specified Commands, and such other agencies as the Secretary of Defense establishes to meet specific requirements.

b. The Department of Defense does not have a central repository for DoD records. FOI requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOI requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. Listing of DoD Component Addresses for FOI Requests

a. Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff (OSD/OJCS). Send all requests for records from the below listed offices to: Directorate for Freedom of Information and Security Review, Assistant Secretary of Defense (Public Affairs), Room 2C757, The Pentagon, Washington, D.C. 20301-1400.

Executive Secretariat
Under Secretary of Defense (Policy)
  Deputy Under Secretary of Defense (Policy)
  Deputy Under Secretary of Defense (Policy & Resources)
  Deputy Under Secretary of Defense (Trade Security Policy)
Under Secretary of Defense (Acquisition)
  Assistant Secretary of Defense (Procurement & Logistics)
  Assistant Secretary of Defense (Command, Control, Communication and Intelligence)
  Assistant Secretary of Defense (Research and Technology)
  Assistant Secretary of Defense (Atomic Energy)
  Director of Defense Research and Engineering
  Director of Small and Disadvantaged Business Utilization
  Assistant Secretary of Defense (Comptroller)
Assistant Secretary of Defense (Force Management & Personnel)
Assistant Secretary of Defense (Health Affairs)
Assistant Secretary of Defense (International Security Policy)
  Deputy Assistant Secretary of Defense (European & NATO Policy)
  Deputy Assistant Secretary of Defense (Negotiations Policy)
  Deputy Assistant Secretary of Defense (Nuclear Forces & Arms Control Policy)
Assistant Secretary of Defense (International Security Affairs)
  Deputy Assistant Secretary of Defense (African Affairs)
  Deputy Assistant Secretary of Defense (East Asian & Pacific Affairs)
  Deputy Assistant Secretary of Defense (Inter-American Affairs)
  Deputy Assistant Secretary of Defense (Near East & South Asian Affairs)
  Deputy Assistant Secretary of Defense (Policy Analysis)
Defense Security Assistance Agency
Assistant Secretary of Defense (Legislative Affairs)

Assistant Secretary of Defense (Public Affairs)
Assistant Secretary of Defense (Reserve Affairs)
Assistant to the Secretary of Defense (Intelligence Oversight)
General Counsel
Inspector General
Net Assessment
Program Analysis & Evaluation
Defense Advanced Research Projects Agency
Strategic Defense Initiative Organization
Operational Test and Evaluation
Defense Systems Management College
National Defense University
Armed Forces Staff College
Department of Defense Dependents Schools
Uniformed Services University of the Health Sciences

b. Department of the Army. Army records may be requested from those Army officials who are listed in 32 CFR 518, Appendix B. Send requests to Chief, Information Access Branch, AS-OPS-MRA, Hoffman I, Room 1146, 2461 Eisenhower Avenue, Alexandria, VA 22331-0301, for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records.

c. Department of the Navy. Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the Commanding Officer and clearly indicating that it is an FOI request. Send requests to Chief of Naval Operations, Code OP-09B30, Room 5E521, Pentagon, Washington, D.C. 20350-2000, for records of the Headquarters, Department of the Navy, and to Freedom of Information and Privacy Act Office, Code MPI-60, HQMC, Room 4046, Washington, D.C. 20308-0001, for records of the U.S. Marine Corps, or if there is uncertainty as to which Navy or Marine activities may have the records.

d. Department of the Air Force. Air Force records may be requested from the Commander (ATTENTION: DADF) of any Air Force installation, major command, or separate operating agency, or from the Headquarters, United States Air Force. Requester should send FOI requests to Freedom of Information Manager, HQ USAF/DADF, Pentagon, Room 4A1088C, Washington, D.C. 20330-5025, for Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records.

e. Defense Contract Audit Acency (DCAA). DCAA records may be requested from any of its regional offices or from its headquarters. Requesters should send FOI requests to the Defense Contract Audit Agency, ATTN: CMR, Cameron Station, Alexandria, VA 22304-6178, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

f. Defense Communications Agency (DCA). DCA records may be requested from any DCA field activity or from its headquarters. Requesters should send FOI requests to Defense Communications Agency, Code H104, Washington, D.C. 20305-2000.

g. Defense Intelligence Agency (DIA). FOI requests for DIA records may be addressed to Defense Intelligence Agency, ATTN: RTS-1 (FOIA), Washington, D.C. 20340-3299.

h. Defense Investigative Service (DIS). All FOI requests for DIS records should be sent to the Defense Investigative Service, ATTN: V0020, 1900 Half St., SW, Washington, D.C. 20324-1700.

i. Defense Logistics Agency (DLA). DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOI requests to Defense Logistics Agency, ATTN: DLA-XAM, Cameron Station, Alexandria, VA 22304-6130.

j. Defense Mapping Agency (DMA). FOI requests for DMA records may be sent to the Defense Mapping Agency, Naval Observatory Building 56, Washington, DC 20305-3000.

k. Defense Nuclear Agency (DNA). FOI requests for DNA records may be sent to the Defense Nuclear Agency, Public Affairs Office, Room 111, Washington, D.C. 20305-1000.

l. National Security Agency (NSA). FOI requests for NSA records may be sent to the National Security Agency/Central Security Service, ATTN: Q-43, Fort George G. Meade, MD 20755-6000.

3. Other Addressess

Although the below organizations are OSD/OJCS Components, for the purposes of the FOIA, requests may be sent direct ot the addresses indicated.

a. Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS). Director, Attention: Freedom of Information Officer, OCHAMPUS, Aurora, CO 80045-6900.

b. Chairman, Armed Services Board of Contract Appeals (ASBCA). Chairman, Armed Services Board of Contract Appeals, Hoffman II, 200 Stovall Street, Alexandria, VA 22332

c. U.S. Central Command. U.S. Central Command/CCAG, MacDill Air Force Base, FL 33608

d. U.S. European Command. Records Administrator, Headquarters, U.S. European Command/ECJ1-A, APO New York 09128

e. U.S. Southern Command. Attorney-Advisor (International), Headquarters U.S. Southern Command/SCSJA, APO Miami 34003-0007

f. U.S. Pacific Command. Administrative & Security Programs Division (J147A), Joint Secretariat, CINCPAC Box 28, Camp H. M. Smith, HI 96861-5025

g. U.S. Special Operations Command. Freedom of Information Officer, ATTN: U.S. Special Operations Command, MacDill Air Force Base, FL 33608

h. U.S. Atlantic Command. Commander-in-Chief, Atlantic Command, Code J008, Norfolk, VA 23511

i. U.S. Space Command. Chief, Records Management Division, Directorate of Administration, United States Space Command, Peterson Air Force Base, CO 80914-5001

4. National Guard Bureau. FOI requests for National Guard Bureau records may be sent to the Chief, National Guard Bureau, (NGB-PO), Pentagon, Room 2E383, Washington, D.C. 20301-2500.

5. Miscellaneous. If there is uncertainty as to which DoD component may have the DoD record sought, the requester may address a Freedom of Information request to the Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, D.C. 20301-1400.

APPENDIX C

LITIGATION STATUS SHEET

1. Case Number*

2. Requester

3. Document Title or Description

4. Litigation

   a. Date Complaint Filed
   b. Court
   c. Case File Number*

5. Defendants (agency and individual)

6. Remarks: (brief explanation of what the case is about)

7. Court Action

   a. Court's Finding
   b. Disciplinary Action (as appropriate)

8. Appeal (as appropriate)

   a. Date Complaint Filed
   b. Court
   c. Case File Number*
   d. Court's Finding
   e. Disciplinary Action (as appropriate)

*Number used by Component for reference purposes.

APPENDIX D

OTHER REASON CATEGORIES

1. Transferred Requests

This category applies when responsibility for making a determination or a decision on categories 2, 3, or 4 below is shifted from one Component to another, or to another federal agency.

2. Lack of Records

This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. Failure of Requester to Reasonably Describe Record

This category is specifically based on Section 552(a) (3)(a) of the FOIA (reference (a)).

4. Other Failures by Requesters to Comply with Published Rules or Directives

This category is based on Section 552(a)(3)(b) of the FOIA (reference (a)) and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. Request Withdrawn by Requester

This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

6. Not an Agency Record

This category covers situations where the information requested is not an agency record within the meaning of the FOIA and this Regulation.

RECORD OF FREEDOM OF INFORMATION *(FOI)* PROCESSING COST

Please read instructions on reverse before completing form.

1. REQUEST NUMBER	2. TYPE OF REQUEST *(X one)*		3. DATE COMPLETED *(YYMMDD)*
	☐ a INITIAL	☐ b APPEAL	

	TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)
4. CLERICAL HOURS *(E-9/GS-8 and below)*				
a SEARCH		X $12.00	=	*
b REVIEW / EXCISING				**
c CORRESPONDENCE AND FORMS PREPARATION				
d OTHER ACTIVITY				
5. PROFESSIONAL HOURS *(0-1 - 0-6/GS-9 - GS/GM-15)*	TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)
a SEARCH		X $25.00	=	*
b REVIEW / EXCISING				**
c COORDINATION / APPROVAL / DENIAL				
d OTHER ACTIVITY				
6. EXECUTIVE HOURS *(0-7/GS/GM-16/ES 1 and above)*	TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)
a REVIEW / EXCISING		X $45.00	=	**
b COORDINATION / APPROVAL / DENIAL				
7. COMPUTER SEARCH	TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)
a MACHINE HOURS		X	=	*
8. OFFICE COPY REPRODUCTION	NUMBER (1)	RATE (2)		COST (3)
a PAGES REPRODUCED		X .15	=	*
9. MICROFICHE REPRODUCTION	NUMBER (1)	RATE (2)		COST (3)
a MICROFICHE REPRODUCED		X .25	=	*
10. PRINTED RECORDS	TOTAL PAGES (1)	RATE (2)		COST (3)
a FORMS				*
b PUBLICATIONS		X .02	=	*
c REPORTS				*

11. *For FOI Office Use Only*

a SEARCH FEES PAID		e TOTAL COLLECTABLE COSTS	
b COPY FEES PAID		f TOTAL PROCESSING COSTS	
c TOTAL PAID		g TOTAL CHARGED	
d DATE PAID *(YYMMDD)*		h FEES WAIVED/REDUCED *(X one)*	☐ Yes ☐ No

* *Chargeable to all requesters.*
** *Chargeable only to commercial requesters.*

DD Form 2086, JUN 87 *Previous editions are obsolete* 948,152

INSTRUCTIONS FOR COMPLETING DD FORM 2086

This form is used to record costs associated with the processing of a Freedom of Information request.

1. **REQUEST NUMBER** - First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 87-001.

2. **TYPE OF REQUEST** - Mark the appropriate block to indicate initial request or appeal of a denial.

3. **DATE COMPLETED** - Enter year, month and day, i.e., 870621.

4. **CLERICAL HOURS** - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search - Time spent in locating from the files the requested information.

Review / Excising - Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation - Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity - Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester. Further discussion of chargeable fees is found in DoD Directive 5400.7, Enclosure 6.

5. **PROFESSIONAL HOURS** - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search / Review / Excising, and Other Activity - See explanation above.

Coordination / Approval / Denial - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester.

6. **EXECUTIVE HOURS** - For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Review / Excising - See explanation above.

Coordination / Approval / Denial - See explanation above.

- Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category.

7. **COMPUTER SEARCH** - Enter exact computer processing value in the total hours column. The salary scale (equating to items 4 and/or 5) for the programmer / operator executing the search will be recorded as part of the computer search cost.

- Multiply the total hours by the computer hourly rate and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input / output devices, and memory capacity of the actual computer configuration used. This amount is fully chargeable to the requester.

8. **OFFICE COPY REPRODUCTION** - Enter the number of pages reproduced.

- Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

9. **MICROFICHE REPRODUCTION** - Enter the number of microfiche copies reproduced.

- Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

10. **PRINTED RECORDS** - Enter total pages in each category. The categories are:

Forms *(Include any type of printed forms)*

Publications *(Include any type of bound document, such as directives, regulations, studies, etc.)*

Reports *(Include any type of memorandum, staff action paper, etc.)*

- Multiply the total number of pages in each category by the rate per page and enter cost figures. The entire cost of each category is chargeable to the requester.

11. **FOR FOI OFFICE USE ONLY** -

Search Fees Paid - Enter total search fees paid by the requester.

Copy Fees Paid - Enter the total of copy fees paid by the requester.

Total Paid - Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid - Enter year, month and day, i.e., 871024, the fee payment was received.

Total Collectable Costs - Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester.

Total Processing Costs - Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived / Reduced - indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Yes" block or an "X" in the "No" block.

DD Form 2086 Reverse, JUN 87

DoD FREEDOM OF INFORMATION ACT PROGRAM COMPONENTS

Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff/Unified Commands and Other Agencies Assigned to OSD for Administrative Support

Department of the Army

Department of the Navy

Department of the Air Force

Defense Communications Agency

Defense Contract Audit Agency

Defense Intelligence Agency

Defense Investigative Service

Defense Logistics Agency

Defense Mapping Agency

Defense Nuclear Agency

National Security Agency

* U.S. GOVERNMENT PRINTING OFFICE : 1989 O - [illegible]

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